

Jim Bromgard Testimony in Support of Senate Bill 236

My name is Jimmy Ray Bromgard. In 1987 I was convicted of a crime I did not commit, the rape of an 8 year old girl. I spent over 15 years in prison for this crime before I was exonerated by DNA testing. My wrongful conviction was the result of two factors, both the assignment of incompetent counsel under contract with Yellowstone County to provide defense to indigents, such as myself, and false evidence supplied by the Montana State Crime Lab.

At trial, my counsel failed to do any of the significant things that would have given me a chance to defend myself against the horrendous charges brought against me. At the time he was appointed to represent me and defend my liberty, my attorney was known to be incompetent. Nevertheless, the County and its officials permitted this attorney to provide grossly ineffective counsel to me. Among numerous other deficiencies, my attorney failed to interview any witnesses or conduct any pretrial investigation. He failed to hire any experts to challenge the erroneous hair evidence, he failed to file any pretrial motions, and he failed to challenge the accuracy and reliability of the victim's identification, even though the victim herself at trial said she was "not too sure" of her identification of me as her assailant. My attorney did not prepare me before having me take the witness stand in my own defense. Had my attorney done any of these things, as any reasonably competent attorney should have, I would not have spent 15 years in prison for a crime I did not commit.

In the testimony you are considering today, you have heard that one problem with the death penalty is that an innocent person could be put to death. My conviction is a classic demonstration of this risk. Had the child I was accused of raping died, it is possible and ever likely I would have been executed prior to DNA testing even being available. What is perhaps most frightening is that my case was not a case where a mistake had been made. Rather, in my

case, the evidence used against me at my trial was false. The State Crime Lab expert used made up statistics and relied on hair evidence that was not examined consistent with the standards of the time.

My conviction sent me to Montana State Prison and two other out of state prisons. Because I came into the prison system convicted a raping a child, I was the subject of considerable violence, often beaten each morning when my cell door opened. In order to survive the violence, I made certain I went to max, where I was locked up 23 hours a day. I survived 2 prison riots including the riot at the Montana State Prison in 1991.

My release and the new beginning of my life was due to the work of the Innocence Project, however, my exoneration was the result of luck -- a rape kit from the crime scene had been maintained and the Innocence Project was able to find funds to perform the DNA evidence testing which established my innocence. Without the rape kit, I would still be in prison, set to spend the next 20 years of my life.

What happened to me is proof that wrongful convictions can and do occur even in Montana. After my exoneration, two other individuals who were also convicted by hair evidence, were found to have been innocent of the crimes of which they had been convicted. Currently over 230 other cases await an independent examination to determine whether false testimony resulted in those convictions as well. By the grace of God none of these convictions resulted in a death sentence, yet. But until the death penalty is removed, there will always be the possibility that an innocent man will be killed at the hands of the State. That alone is reason to abolish it. The death penalty provides no second chance and exoneration of a dead man is no solace.